

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 777 Telephone Solicitation
SPONSOR(S): Homan and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee		Reese	Reese
2) Utilities & Telecommunications Committee			
3) State Resources Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill prohibits a telephone solicitor from making a telephonic sales call to any telephone number assigned to a cellular telephone service or any service where the called party is charged for the call. An exception is provided for calls made with prior written consent of the called party. Additionally, this bill defines "cellular telephone," "electronic serial number," and "mobile identification number."

The bill appears to have no fiscal impact to state or local government and has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill prohibits a telephone solicitor from making a telephonic sales call to any telephone number assigned to a cellular telephone service or any service where the called party is charged for the call. An exception is provided for calls made with prior written consent of the called party.

B. EFFECT OF PROPOSED CHANGES:

Present situation

State Law

The Florida Telemarketing Act requires non-exempt¹ businesses² and their salespersons³ that engage in the sale of consumer goods or services by telephone in Florida⁴ to be licensed by the Department of Agriculture and Consumer Services (DACS). Along with an application, an applicant must post security (surety bond, certificate of deposit, or letter of credit) of no less than \$50,000.⁵ Each license issued is required to be renewed annually by paying a new fee and submitting a new application to DACS.⁶

DACS maintains Florida's "Do Not Call" list.⁷ Residents who do not want to receive sales calls may have their residential, mobile or paging device telephone number included on this list; however, business numbers may not be included on the list.⁸ There is an initial fee of \$10 for each telephone number and a \$5 annual renewal fee.⁹ If a residential number is on the list, a telephone solicitor may not make an unsolicited telephone call to that number.¹⁰ The following are not considered to be unsolicited telephone calls:

- In response to an express request of the person called,
- In connection with an existing debt,
- A prior or existing business relationship, or
- From a newspaper publisher.¹¹

DACS is permitted to pursue administrative¹² and civil¹³ remedies against persons who violate the Florida Telemarketing Act or rules adopted or orders issued pursuant to the Florida Telemarketing Act. In addition, any commercial telephone seller or salesperson who solicits purchasers for a commercial telephone seller who is not licensed with DACS commits a third degree felony.¹⁴ Any subsequent violations are punishable as a second degree felony.¹⁵ Further, an injured individual may bring a civil

¹ Section 501.604, F.S., contains list of exemptions

² Section 501.605, F.S.

³ Section 501.607, F.S.

⁴ Section 501.605(1), F.S., provides that doing business in Florida includes telephone solicitation from a location in Florida or solicitation from other states or nations of purchasers located in Florida.

⁵ Section 501.611, F.S.

⁶ Section 501.609(1), F.S.

⁷ Section 501.059(3)(a), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 501.059(4), F.S.

¹¹ Section 501.059(c), F.S.

¹² Section 501.612, F.S.

¹³ Section 501.618, F.S.

¹⁴ Section 501.623, F.S.

¹⁵ Section 501.623(6), F.S.

action for recovery of actual damages and/or punitive damages, including costs, court costs, and attorney's fees.¹⁶

Federal Law

The Telephone Consumer Protection Act (TCPA) prohibits autodialed calls to emergency telephone lines, health care facilities, and any service for which the called party is charged for the call such as paging services and cellular telephones.¹⁷ The TCPA also prohibits delivery of artificial or prerecorded messages to residences without the prior express consent of the called party except for emergency purposes.¹⁸ The TCPA also provides a right of action allowing individuals, businesses, and state officials to bring suit.¹⁹

In addition to the TCPA, the federal government regulates how and when telemarketing occurs. The Telemarketing and Consumer Fraud Abuse Prevention Act empowers the Federal Trade Commission (FCC) to issue the Telemarketing Sales Rule,²⁰ which provides details on prohibited telemarketing practices.²¹

Effect of Proposed Changes

The bill amends s. 501.059, F.S., by providing the following terms and definitions:

- **Electronic serial number** means the unique numerical algorithm that is programmed into the microchip of each cellular telephone by the manufacturer and is vital to the successful operation and billing of the telephone.
- **Mobile identification number** means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier.
- **Cellular telephone** means a communication device containing a unique electronic serial number that is programmed into its computer chip by its manufacturer and whose operation is dependent on the transmission of that electronic serial number, along with a mobile identification number that is assigned by the cellular telephone carrier, in the form of radio signals through cell sites and mobile switching stations.

The bill also prohibits a telephone solicitor from making a telephonic sales call to any telephone number assigned to a cellular telephone service or any service where the called party is charged for the call. An exception is provided for calls made with prior written consent of the called party.

C. SECTION DIRECTORY:

Section 1. Amends section 501.059, F.S., to define the terms "cellular telephone," "electronic serial number," and "mobile identification number"; to prohibit a telephone solicitor from making a telephonic sales call to certain numbers without the subscriber's prior written consent.

Section 2. Amends section 501.603, F.S. to conform cross-references.

Section 3. Amends section 648.44, F.S., to conform cross-references.

Section 4. Provides an effective date of July 1, 2006.

¹⁶ Section 501.625, F.S.

¹⁷ 47 U.S.C. s. 227(b)(1)(A)(i)-(iii).

¹⁸ 47 U.S.C. s. 227(b)(1)(B).

¹⁹ 47 U.S.C. s. 227(b)(3), (f)(1).

²⁰ 15 U.S.C. s. 6102.

²¹ 16 C.F.R. Part 310.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits telephone solicitors from making telephonic sales calls to cellular phones. The costs involved with compliance are indeterminate.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rule-making authority is granted by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A